



IN THE MATTER OF:

Complainant,

BARON HUOT OIL

EEOC NO: 21BA1234

ALS NO: 11436

RECOMMENDED ORDER AND DECISION

A public hearing was held on the allegations of the complaint on November 18, 2002. Closing briefs were completed on January 27, 2002. Complainant did not file a Reply by the due date (February 10, 2003). This matter is now ready for decision.

1. On June 29, 1999, Complainant began her employment as a cashier at Baron Huot Oil's service station at the Clifton location.

2. Originally, Complainant's supervisor was Sue Pittman. Later, Judy Norton was hired to fill that position.
3. Meredith Huot-Coy is the Retail Supervisor at Respondent.
4. Vincent Demers, Complainant's father, and James Demers, Complainant's brother, also worked at Baron Huot's Clifton location.
5. On the morning of December 22, 1999, Tom Douglas, also an employee at Respondent's Clifton location reported to Norton that he saw Complainant going through personnel files in the management office on the night of December 21, 1999.
6. Norton relayed this information to Huot-Coy and they decided that unless Cohoon had a very good reason for being in the files, she should be terminated. However, Huot-Coy left the final decision regarding what disciplinary action should be taken, to Norton.
7. Later, on December 22, 1999, Complainant's father, Vincent Demers, mother, Jeannine Demers, and brother, James Demers, went to Baron Huot. Complainant was on duty at that time. Vincent Demers called Judy Norton (who had not yet arrived) and quit, stating that increased demands at his farm necessitated his resignation. James Demers then did the same.
8. Then, Complainant asked her coworkers, Jeff Ducat and Julia Delabri, if they would call Norton and tell her that she (Cohoon) was having an asthma attack and needed to go home. Complainant told Delabri that she needed to go home and talk to her husband to see if it was all right for her to quit like her father and brother. Delabri and Ducat refused.
9. Complainant then called Norton's home, and spoke to Norton's husband, Gerald Norton. Cohoon told Gerald Norton that she was having an asthma attack and was leaving work.
10. James Demers left his sister at the store and went home. Vincent Demers did not think that Complainant was having an asthma attack. He also left his daughter at the store.
11. When she arrived at the Clifton store, Judy Norton questioned Ducat and Delabri. They told her that Complainant had asked them to call and say that she was having an asthma attack and needed to go home. Also, they told Norton that Cohoon was not having an asthma attack; she just wanted to go home and talk to her husband about quitting, as her father and brother did.

12. Based upon the incident with the personnel files (Finding of Fact #5) and the fact that Cohoon left her post, faking illness, Norton decided to terminate Cohoon.
13. The next day, December 23, 1999, Complainant and Jeannine Demers came in to the store and met with Norton. Norton terminated Complainant for going through personnel files without permission and for leaving her post without obtaining management approval.
14. Complainant, Dina Cohoon, was not a credible witness at the public hearing.
15. Jeannine Demers was not a credible witness at the public hearing.

Conclusions of Law

1. Complainant, Dina Cohoon, is an “aggrieved party” as defined by Section 1103(B) of the Illinois Human Rights Act.
2. Respondent, Baron Huot Oil, is an “employer” within the meaning of Section 2-101(B)(1)(a) of the Act.
3. The Illinois Human Rights Commission has jurisdiction over the parties as well as the subject matter.
4. Complainant failed to present a *prima facie* case of discrimination based upon physical handicap when she failed to show that her termination was related to her handicap.
5. Respondent articulated a legitimate, non-discriminatory reason for its treatment of Complainant when it showed that Complainant was fired because she left her post early, falsely claiming that she was having an asthma attack and because Cohoon went through other employees’ personnel files without authorization. .
6. Complainant failed to prove by a preponderance of the evidence that Respondent's articulated reason was a pretext for handicap discrimination when she offered no evidence of pretext.
7. Complainant failed to prove by a preponderance of the evidence that Respondent failed to reasonably accommodate her.

Discussion

The method of proving a charge of discrimination through indirect means is well established. First, complainant must establish a *prima facie* showing of discrimination. If (s)he does so, respondent must articulate a legitimate, non-discriminatory reason for its actions. In order for complainant to prevail, (s)he must then prove that respondent's articulated reason is pretextual. Zaderaka v. Human Rights Commission, 131 Ill.2d 172, 545 N.E.2d 684 (1989).

Handicap Discrimination

In order to establish a *prima facie* case of handicap discrimination, Complainant must show: (1) she is handicapped within the definition of the Act; (2) her handicap is unrelated to her ability to perform her job or, if the handicap is related to the ability to perform, after a request, the employer failed to make a reasonable accommodation necessary for her job performance; and (3) an adverse job action was taken against Complainant related to her handicap. *See, Cabral and Moen Inc.*, Ill. HRC. Rep. , (Charge No 1996CF1003, November 2, 1999). In the case at bar, Cohoon failed to establish her *prima facie* case. The adverse job action taken against her was not related to her handicap.

Respondent does not contest that Cohoon is handicapped within the meaning of the Illinois Human Rights Act, or that her asthma was unrelated to her ability to perform her duties. (*Respondent's Closing Brief at 4*). However, the adverse job action was not taken against Complainant related to her handicap. The evidence supporting this finding

is intertwined with Respondent's legitimate non-discriminatory reasons for terminating Complainant; this evidence will be articulated and analyzed below.

Respondent states that it fired Complainant because she left her post early, falsely claiming that she was having an asthma attack and because Cohoon went through other employees' personnel files without authorization. (*Tr.*, 135, 220-221). It is not necessary to determine whether Respondent's reasoning and decision were right, only whether Complainant presented sufficient evidence that Respondent's reasons for terminating Complainant are dishonest. Olsen v. Marshall & Ilsley Corp., 267 F.3d 597, 602 (7th Circuit 2001). In the present case, Complainant failed to do so.

Baron Huot reasonably determined that Complainant was not suffering from an asthma attack when she left the store on December 22, 1999. Instead, she wished to go home and speak to her husband about quitting her job at Respondent, as her father and brother had just done. (*Tr.* 167).

On December 22, 1999, Complainant's father and brother called Judy Norton, the manager at Respondent's Clifton location, and quit without notice, stating that the duties on their farm were overwhelming and that they therefore could no longer work at Baron Huot. (*Tr.* 101, 109). Within minutes, Complainant called Judy Norton and left a message with Norton's husband, stating that she needed to leave early because she was having an asthma attack. When she arrived at the store, Norton interviewed Cohoon's coworkers, Jeff Ducat and Julia Delabri, who stated that Cohoon asked them to lie to Norton, telling her that Cohoon was ill and had to leave -- both refused; neither Ducat nor Delabri believed that Cohoon was having an asthma attack. (*Tr.* 140, 180-183, 221, *Delabri Evidence Deposition*, 19-22). In fact, Delabri stated that Cohoon told her that

she had to talk to her husband to see if it was all right to quit her job as her father and brother had done. *Id.*

Further, Complainant's brother testified that on December 22, 1999, he knew that Cohoon was having an asthma attack, yet he left her at Baron Huot, went home and worried about her. He did not ask her if she had her nebulizer. He did not ask her if she needed to go to the hospital. (*Tr. 116-117*). This tribunal finds it extremely hard to believe that Cohoon's brother would have left her if he truly believed that she was having an asthma attack. Asthma is a dangerous disease. If Cohoon were really having an attack, he would have given her aid – or at least showed more concern.

Additionally, although Complainant testified that she was having an asthma attack on December 22, 1999, her credibility was damaged by her differing answers to identical questions at the public hearing in the case at bar, and at the hearing held at the Illinois Department of Employment Security. Cohoon gave different answers regarding whether she was in the office looking at personnel files, why she was in the office looking at personnel files, and whether she had her nebulizer with her the day she left Respondent's place of business early. (*Tr. 62-64*). This indicates a severe lack of candor on Complainant's part and renders her testimony incredible.

It is true that Cohoon's mother, Jeanine Demers, testified that Judy Norton said, "your asthma has put me in a bind", when explaining why Cohoon was terminated. (*Tr. 121, 130*). However, Norton denies this. (*Tr. 159*). Norton no longer works for Baron Huot; she quit under contentious circumstances. Therefore, she is unlikely to lie on Respondent's behalf. Unfortunately, the same cannot be said of Jeanine Demers. Cohoon is her daughter; it is more likely that Demers colored her testimony to favor her

child. Further, even Cohoon's father testified that she was not having an asthma attack when he left the store on December 22, 1999. (*Tr. 102*).

Additionally, Respondent's termination of Cohoon for going through personnel files without permission was reasonable. On December 21, 1999, a coworker saw Complainant in the manager's office going through personnel files. (*Tr. 170*). The next day, that coworker reported this to Judy Norton, who spoke with Meredith Huot-Coy, and together they decided to terminate Complainant for viewing other employees' personal information if Complainant could not provide a good explanation for doing so. (*Tr. 135, 137-138, 170-171, 222-223*).

Complainant has put forth no evidence to show that this was pretextual. Cohoon testified that another manager, John Crevier, gave her permission to go into the filing cabinet where the personnel files were kept. At trial, Crevier had no recollection of giving Cohoon such permission. (*Tr. 202-204*). Cohoon has not demonstrated pretext here.

Huot Coy and Norton decided that unless Complainant had a good reason for going through the personnel files, she should be terminated. (*Tr. 138, 222*). However, Huot-Coy gave Norton final decision regarding the disciplinary action to be taken against Cohoon. (*Tr. 226*). Based upon the file incident, plus the fact that Ducat and Delabri stated that Cohoon asked them to lie for her so that she could leave early, Norton decided that termination was the necessary action. Both of these incidents are serious infractions. Despite Complainant's argument to the contrary, Norton did not need to request a doctor's note after interviewing Ducat and Delabri – it was clear that Cohoon was not ill

when she left her post on December 22, 1999. Respondent's action was reasonable; Complainant has failed to demonstrate unlawful handicap discrimination.

Failure To Accommodate

Next, Cohoon contends that Baron Huot failed to accommodate her handicap because by terminating her, it failed to allow her to leave because she was having an asthma attack. To succeed in this claim, Cohoon must show: (1) duty to accommodate; (2) accommodation was requested; (3) accommodation was necessary for adequate job performance. *See*, Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App. 536, 699 N.E.2d 143, 232 Ill.Dec. 696 (3rd District 1998), Dillard and Wal-Mart Stores, Inc., (1999 ILHUM LEXIS, March 11, 1999). Again, Complainant has failed to establish her *prima facie* case. Respondent has no duty to accommodate Cohoon because she did not have to leave work (the requested accommodation) in order to perform the essential duties of her job. As shown *supra*, Cohoon was not having an asthma attack on December 22, 1999. *See*, Traeger v. Illinois Department of Human Rights, 293 Ill.App.3d 851, 688 N.E.2d 1209, 228 Ill.Dec. 232 (2nd District 1997).

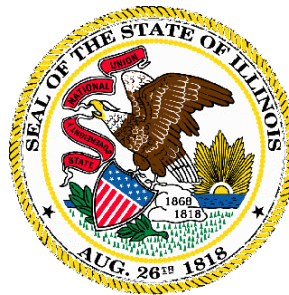
Further, even if this tribunal found that Cohoon requested an accommodation when she spoke to Judy Norton's husband, said accommodation was not necessary for adequate job performance. For reasons enumerated *supra*, Respondent reasonably believed that Complainant was not having an asthma attack when she requested to leave work early on December 22, 1999. Therefore, the accommodation – being allowed to leave early – was not necessary for adequate job performance.

Further, even if Cohoon had established her *prima facie* case here, she cannot show that Baron Huot's non-discriminatory reasons for terminating her were pretextual. Again, Respondent terminated Complainant because she left her post early, falsely claiming that she was having an asthma attack and because Cohoon went through other employees' personnel files without authorization. For the same reasons outlined *supra*, at pages 4-7, Complainant has not demonstrated that Respondent's reasons for not accommodating her -- not allowing her to leave work early on December 22, 1999 -- were pretextual.

Recommendation

Based upon the reasons stated above, I recommend that the instant complaint and underlying charges of discrimination against Baron Huot Oil be dismissed with prejudice.

HUMAN RIGHTS COMMISSION



BY:

WILLIAM H. HALL, IV
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: October 24, 2003